

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAVID CARTER,

Plaintiff,

-v-

12-CV-9087-LTS-AJP

NY STATE C.O. J. CARROLL,

Defendant.

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MEMORANDUM ORDER

This action was brought by incarcerated pro se plaintiff David Carter (“Carter”) against New York State Corrections Officer James Carroll (“Carroll”) pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Carroll used excessive force in violation of Carter’s constitutional rights. Carroll moved for summary judgment and, on December, 17, 2013, the Court granted Carroll’s motion and dismissed the case because Carter had failed to exhaust his administrative remedies before filing suit in federal court. See 42 U.S.C. § 1997e(a). Carter now moves for reconsideration under Local Civil Rule 6.3 and for relief from the Court’s judgment under Rule 60(b) of the Federal Rules of Civil Procedure. Carter has also appealed the dismissal of the action to the Second Circuit.<sup>1</sup>

The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331. The Court has considered carefully the parties’ submissions and arguments. For the following reasons,

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<sup>1</sup> Carter’s motion for reconsideration contains a handwritten date of December 23, 2013 and was date-stamped January 2, 2014 by the Clerk’s Office (docket entry no. 75). Carter’s notice of appeal contains a handwritten date of December 23, 2013 and was date-stamped January 7, 2013 by the Clerk’s Office (docket entry no. 76). The Second Circuit has issued an order staying the appeal pending resolution of Carter’s motions (docket entry no. 84).

Carter's motion for reconsideration is granted and his motion for relief from the judgment dismissing his complaint is granted.

#### BACKGROUND

Carter alleges that, on December 6, 2012, Carroll struck him repeatedly with a wooden baton while breaking up a fight between Carter and another inmate (Wen Decl. Exhibit C; Def.'s L.R. 56.1 Statement at ¶¶ 12–13) and that Carroll continued to strike him after Carter and the other inmate had been separated (Carter Dep. at 53).<sup>2</sup> Carter also alleges that, when he spoke to area supervisor Sergeant Cipollini shortly after the incident, Cipollini said that he would "break [Carter's] neck" and "falsely charge [him] with assault on staff." (Pl.'s Mem. Opp'n Summ. J. 1.) Carter did not file an administrative grievance after the incident. Rather, he commenced this lawsuit three days after the incident. (Docket entry no. 1.)<sup>3</sup> Carter did not initiate administrative grievance proceedings thereafter, although he did write to the superintendent of the facility to complain of the incident. It is undisputed that Carter was familiar with the grievance system for inmates. Carter asserted, in response to the original summary judgment motion practice, that he did not file a grievance because he feared retaliation by Sergeant Cipollini.

In his submissions in connection with the instant motion practice, he reiterates this contention, proffering further details regarding the circumstances of his confinement following the December 6, 2012, incident and his own state of mind. Specifically, he alleges that he was held in Special Housing Unit ('SHU') confinement for 28 days following the

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<sup>2</sup> The details of Carter's allegations regarding the incident are recited in the Court's December 17, 2013, Memorandum Order, familiarity with which is presumed.

<sup>3</sup> Carter's complaint bears a handwritten date of December 9, 2012, and a December 12, 2012, date stamp from the Clerk's Office.

incident in an area of the prison facility that was only a short distance from the area in which Carroll and Cipollini worked. He further alleges that Carroll followed and “stalked” Plaintiff in the area of his SHU cell approximately two weeks after the original incident, after a disciplinary hearing at which Plaintiff had requested that Carroll be interrogated. Plaintiff proffers that he has a history of paranoid schizophrenia and asserts that he did not grieve the incident out of fear of retaliation by Cipollini, either in the form of further physical assault or in the form of a false incident report that could result in an order subjecting Plaintiff to further confinement.<sup>4</sup> According to Plaintiff, he was returned to the area in which Carroll worked after his 28 days in SHU, and was not transferred to the Great Meadows prison facility until 70 days after the incident, by which time the administrative deadline for filing a grievance had run. He asserts that he raised the question of filing a grievance with “the law library officer at Great Meadow and his remarks were ‘you are plainly out of luck.’”

#### DISCUSSION

After careful consideration of the parties’ original submissions, the Court granted Carroll’s motion for summary judgment in its December 17, 2013, Memorandum Order (“December 17 Order”). Citing the Prison Litigation Reform Act’s (“PLRA”) requirement that inmates exhaust all administrative remedies before seeking relief in court, 42 U.S.C. § 1997e(a), the Court found that Carter had been aware of the administrative procedures and that he had not taken “any steps to file a grievance while he was at Downstate, or while he was held in the SHU,

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<sup>4</sup> Plaintiff has also submitted a copy of an order entered by Chief Judge Preska granting Rule 60 relief permitting him to reinstate a complaint in a separate case that he had previously withdrawn, reinstated and withdrawn again. Chief Judge Preska found Plaintiff’s actions in that case consistent with his claims of fear of retaliation. (See Carter v. John Doe 1, 12-CV-9278-LAP, docket entry no. 14.) That case was later dismissed after Plaintiff failed to amend his complaint as directed by the Court. Id., docket entry no. 16.

or later, after he had been transferred to Great Meadow Correctional Facility ('Great Meadow').” December 17 Order at 3. Treating Carter’s allegations of Cipollini’s statements as true, the Court found that Cipollini’s statements were not sufficiently linked to Carter’s failure to comply with the grievance procedures “to have rendered the grievance process, of which Carter acknowledges he was aware, unavailable to him, or to any similarly situated individual.” Id. at 5.

“A motion for reconsideration is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources.” Drapkin v. Mafco Consol. Group, Inc., 818 F. Supp. 2d 678, 695 (S.D.N.Y. 2011). A motion for reconsideration will be denied unless the movant can demonstrate “an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” Doe v. NYC Dep’t of Soc. Servs., 709 F.2d 782, 789 (2d Cir. 1983) (internal citation and quotations omitted). Under Rule 60(b) of the Federal Rules of Civil Procedure, “the court may relieve a party or its legal representative from a final judgment, order, or proceeding” for a number of reasons, including “any . . . reason that justifies relief.”

The Court has considered carefully all of Carter’s submissions, his arguments, and the defense’s submission. Carter offers for the first time factual allegations about the SHU’s proximity to the area in which Carter and Cipollini worked. He also alleges that the officers’ access to the SHU deterred him from filing a grievance during the period allotted to him. Finally, Carter also alleges that he suffers from paranoid schizophrenia which, he asserts, contributed to his fear of retaliation.

In light of Plaintiff’s pro se status and his allegations regarding his mental condition, the Court has reconsidered, on the supplemented record, the question of whether

Plaintiff has proffered facts sufficient, when viewed in the light most favorable to him, to demonstrate that he was subjected to threats or intimidation sufficient to render the ordinary grievance procedures unavailable to him. (See December 17, 2013, Memorandum Order at 4-5.) The Court finds that Plaintiff's proffers, which supplement his assertions in his pro se complaint and in his deposition testimony that he did not pursue the administrative grievance process at Downstate because he feared physical or procedural retaliation by Sergeant Cipollini, are sufficient to raise a genuine issue of fact as to whether special circumstances existed that effectively made the grievance process unavailable to him at Downstate. His proffer regarding his effort to initiate the process at Great Meadows is sufficient to address the question of availability of the process after his transfer. Accordingly, upon reconsideration, Plaintiff is granted Rule 60(b) relief in the interests of justice and the Court directs the Clerk to vacate the judgment dismissing the case and the order granting Defendant's motion for summary judgment.

CONCLUSION

For the foregoing reasons, Carter's motion for reconsideration and his motion for relief from judgment are granted. This Memorandum Order resolves docket entries 75 and 89.

The parties are directed to meet promptly with Magistrate Judge Peck for settlement purposes and are reminded that they have the option of consenting to a trial before Judge Peck. Defense counsel must contact the Court to schedule a final pretrial conference if the parties anticipate that the case will go to trial before Judge Swain.

SO ORDERED.

Dated: New York, New York  
September 8, 2014

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

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